IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3297 of 2006()

CC.405/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER:

NIBIN JOSE, AGED 22 YEARS,
S/O. M.V. JOSE, MALAMEL (H), UNICHIRA,
THRIKKAKARA P.O., ERNAKULAM, PIN-682021.

BY ADV. SRI.LITTO VARGHESE PALATHINKAL

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. LEELAMMA, W/O. A.K. SEBASTIAN,
ALANGADAN HOUSE, GODOWN ROAD, EDAPPALLY P.O.,
PIN-682024, ERNAKULAM.

BY ADV. SRI.DINESH R.SHENOY
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3297 of 2006

Dated this the 8th day of December 2006

O R D E R

The petitioner is the eighth accused in a private complaint filed by the respondent wherein offences punishable interalia under Sections 452 and 386 read with 34 I.P.C are alleged. The learned Magistrate has taken cognizance against all the accused including the petitioner. The petitioner has come to this court to assail the cognizance taken against him. He prays that powers under Section 482 Cr.P.C may be invoked to quash the private complaint filed in so far as it relates to the petitioner/8th accused.

2. What is the reason? The learned counsel for the petitioner submits that in the complaint filed before the learned Magistrate, the 8th accused was shown only as M.V.Jose, brother of the first accused. The petitioner is not M.V.Jose but Nibin Jose, son of M.V.Jose. In as much as the complaint, as it was filed originally, did not show the name of the petitioner as 8th accused, the petitioner prays that the proceedings against him may be quashed. Order sheet maintained by the learned Magistrate is produced as Annexure C. It clearly shows that though the complaint was filed much earlier, the learned Magistrate conducted enquiry at the stage of 200 Cr.P.C and issued

process under Section 204 Cr.P.C ultimately only on 01/09/2006. Before process was issued under Section 204 Cr.P.C, this incongruity/incorrectness had been noted and an application has been filed to correct the name of the accused, describing the 8th accused correctly as the petitioner herein. The learned Magistrate, considering that request, had permitted the requisite alterations to be made in the name of the 8th accused.

3. The learned counsel for the respondent submits that the learned Magistrate had only permitted the complainant to correct a patent error in the description of the 8th accused. There was an omission to mention the name of the petitioner as the son of M.V.Jose but certainly the 8th accused was not M.V.Jose. This is evident from the description of the fourth accused who is the said M.V.Jose himself. The learned counsel for the petitioner further relied on two documents produced along with the complaint which also show that the person who was intended to be arrayed as the 8th accused was not the said M.V.Jose but the son of the said M.V.Jose. The learned counsel for the respondent submits that in these circumstances, no mountain can be made out of the mole hill of that inadequacy in the description of the 8th accused in the complaint as originally filed. Powers under Section 482 Cr.P.C have to be invoked only to prevent

abuse and miscarriage of justice. I find that the learned Magistrate had permitted correction only in aid of justice. By no such imagination can this be reckoned as a fit case where powers under Section 482 Cr.P.C can or deserve to be revoked.

4. This Criminal Miscellaneous Case is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006